

REMARKS

This is in response to the Office Action of November 20, 2009. Applicants gratefully acknowledge the Examiner's indication that this application is drawn to patentable subject matter. The Office Action Summary sheet indicates that claims 1-3, 5, 8-15, 18-22, 26, 28, 29, 31, and 32 are allowed. Claims 35-46 are amended to clarify that pharmaceutically acceptable salts of the claim 1 compounds may be used in the recited methods. This is a non-narrowing amendment. No new matter is introduced by this Amendment. Claims 1-3, 5, 6, 8-15, 18-22, 24, 26-29, and 31-46 remain pending in the application.

Claim Objections

On page 2 of the Office Action, under the heading "Claim Objections," the Examiner indicates that Applicants must cancel claims to non-elected subject matter or take other appropriate action. Applicants hereby take other appropriate action. Specifically, *Applicants request rejoinder* of withdrawn claims 33-46, for the following reasons:

Rejoinder requested – claim 46

Claim 46, which is drawn to pharmaceutical compositions that include the claim 1 compounds and pharmaceutically acceptable salts thereof, was formerly examined herein on its merits. In the Office Action of September 17, 2008, the Examiner kindly indicated that the rejection of claim 46 as being indefinite was withdrawn. It is respectfully requested that pharmaceutical composition claim 46 be allowed, along with allowed claim 1 from which it depends.

Rejoinder requested – method of making

This application is the U.S. national phase of a PCT application. Accordingly, 'unity of invention' rules apply. 37 CFR 1.475(b)(3) provides that unity of invention exists if the claims are drawn to the combination: "A product, a process specially adapted for the manufacture of the said product, and a use of the said product." MPEP 1893.03(d) provides that any non-elected

process of making an allowable product should be considered for rejoinder, following the practice set forth in MPEP 821.04(b). Accordingly, since process claims 33 and 34 are drawn to processes of making the claim 1 compounds and their pharmaceutically acceptable salts, rejoinder of claims 33 and 34 with allowed claim 1 is earnestly solicited.

Rejoinder requested – method of using

This application is the U.S. national phase of a PCT application, so that ‘unity of invention’ rules apply. 37 CFR 1.475(b)(3) provides that unity of invention exists if the claims are drawn to the combination: “A product, a process specially adapted for the manufacture of the said product, and a use of the said product.” MPEP 1893.03(d) provides that any non-elected process of using an allowable product should be considered for rejoinder, following the practice set forth in MPEP 821.04(b). Accordingly, since method of use claims 35-45 are drawn to methods of using the claim 1 compounds and their pharmaceutically acceptable salts, rejoinder of claims 35-45 with allowed claim 1 is earnestly solicited.

Claim Rejections

On page 3 of the Office Action, claims 6, 24, and 27 were rejected as failing to define the invention properly. The rejections are respectfully traversed, as follows:

Rejection under 35 U.S.C. § 112, ¶2 – claims 6 and 24

Claims 6 and 24 were rejected under the second paragraph of 35 U.S.C. § 112. The Examiner points out that – while independent claim 1 lists “substituted furyl” and “substituted pyridyl,” among other things, as possible embodiments of the variable R₁ – the specification in lines 16-21 on page 10 provides a definition of “substituted” which does not include the “5-methyl-2-trifluoromethyl-3-furyl” and “4-(4-morpholinyl)-3-pyridyl” species recited in claims 6 and 24. However, Applicants respectfully point out that the specification does provide support for these substituent groups in lines 24-29 on page 7. It is respectfully submitted, therefore, that this ground of rejection should be withdrawn.

Rejection under 35 U.S.C. § 112, ¶2 – claim 27

Claim 27 was rejected under the second paragraph of 35 U.S.C. § 112. The Examiner considers that the nomenclature in dependent claim 27 fails to define the invention properly, to the extent that the compound names therein recite “3-(fluorobenzene-4-carbonyl).” The Examiner believes that this aspect of claim 27 is inconsistent with claim 10, from which claim 27 depends. Applicants respectfully explain, however, first, that the “3” refers to the position of the entire substituent in parentheses and not, *e.g.*, to the position of the fluoro atom on the benzene ring, and, second, that “fluorobenzene-4-carbonyl” as recited in claim 27 means the same thing as “4-fluorobenzoyl” as recited in claim 10, so that in fact claim 27 is consistent with claim 10. It is respectfully submitted, therefore, that this ground of rejection should be withdrawn.

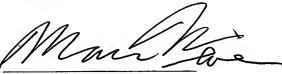
Conclusion

Inasmuch as all objections and rejections are overcome by the present Remarks, passage of this application to Issue is in order and is earnestly solicited.

The Examiner is respectfully requested to contact Richard Gallagher, Registration No. 28,781, at (703) 205-8008 with any questions concerning this application.

Dated: February 22, 2010

Respectfully submitted,

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